

**Preliminary Comments of the Department of Public Service in Advance of
August 31, 2005 Workshop Concerning Board Procedures to Implement Act 61**

August 24, 2005

Summary

In its August 1, 2005 memorandum, the Public Service Board (the “Board”) asked for comments regarding Board implementation of Act 61 of the current biennium. The Board also asked the parties to address the interactions among aspects of Act 61 and about the broader set of issues that should inform procedural implementation of Act 61. The Department of Public Service (“DPS” or the “Department”) offers these preliminary comments in response to the Board’s memorandum, and looks forward to considering the comments and responses of other parties before and during the workshop scheduled for August 31, 2005.

Vermont looks to implement Act 61 during a time in which the industry and the surrounding marketplace continues steady movement toward comprehensive market reform. With the passage of time, Vermont utilities face an ever-increasing exposure to regional energy market volatility and related structural changes to regional markets. Act 61 was developed to provide some promise for long term stability, cost containment, and self-determination. The Board will need to quickly adopt the key provisions of Act 61 with statutory deadlines. The Board should take action at a later time to address aspects of the Act that may not require action by the Board pending the outcome of subsequent proceedings.

The Board should move quickly to establish rules for aspects of Act 61 that have near-term statutory deadlines, such as the SPEED program and the interconnection standards. We recommend these be addressed through workshops to develop proposed rules followed by formal rulemaking proceedings. We also recommend that these rules be on a separate track from those developed for establishing a renewable portfolio standard (“RPS”) and renewable energy credits (“RECs”). Rules for an RPS and RECs should be done later, to go into effect sometime closer to the 2013 time frame when the RPS may go into effect under Act 61, but enough in advance so that a utility may take appropriate action to meet the RPS.

DPS urges the Board to fund the EEU budget in 2006 at the current year level and, during the course of 2006, address changes to the EEU program through a series of workshops. Changes to the scope of service offered by the EEU as well other relevant studies and activities should then inform development of the budget for 2007 and beyond.

The Board should address informally, through informational workshops and opportunity for comment, the issue of special studies which the Act requires the Board to perform.

As the Board is aware, the many aspects of Act 61 present areas of potential procedural and administrative overlap. We encourage the Board to carefully organize and group the issues at the onset to minimize the potential for unnecessary and costly duplication and confusion.

Context for Implementation of Act 61

The Board asked that commenters address potential interactions among various aspects of Act 61 implementation. The Board also asked for comment on relevant "real-world" situations currently facing Vermont utilities and affected parties.

As to "real-world" factors that should inform the Board's plans for implementing Act 61, the Board should recognize that Act 61 occurs in a sea of change within the industry, both regionally and nationally. Vermont utilities increasingly face greater uncertainty in cost containment and potentially diminishing control of many aspects of service and cost.

Localized load growth is straining the ability of Vermont utilities to maintain system reliability without significant commitments of capital. Vermont utilities face significant cost pressures or concerns relating to volatile wholesale market prices for energy and the conclusion of major power contracts. Vermont utilities are having difficulty accessing low-cost capital during a period of difficult market conditions for raising capital. New cost pressures for Vermont utilities and ratepayers are created by market rule changes proposed by the ISO-NE. FERC actions and the Federal Energy Policy Act of 2005 extend the potential reach of federal preemption over Vermont utilities, especially in relation to transmission resources.

Act 61 attempts to provide some measure of control over service provision in the sector. Act 61 attempts to empower Vermont consumers to manage load and make investment in efficiency resources. It attempts to provide some measure of price stability through the encouragement of non-fossil fuel generation, and by encouraging more control of transmission costs and investments through better planning, and numerous studies required of the Board and Department.

As to interactions among proceedings, we urge the Board to minimize the risk of costly overlap in the procedures relied on by the Board in implementing the various aspects of Act 61. The Board should attempt, in the first instance, to group issue sets well at the beginning and identify the appropriate sequencing of proceedings. Where some further measure of coordination is required, the Board should encourage the parties and the Board staff to highlight areas of overlap and ensure that appropriate procedural and administrative mechanisms are used to avoid unwarranted duplication or confusion.

The Board should also leave some room for coordination or cross-pollination in the later stages of investigation and rulemaking. The DPS is hopeful that the transmission planning investigation will yield potential solutions that may inform other aspects of Act 61 implementation and electric energy policy in Vermont. For example, that investigation may provide information relevant to how the Board implements the Act's provision regarding targeting efficiency resource acquisition.

Recommendations for Board Procedures

The Department recommends that the Board address the key aspects of Act 61 first through informal procedures (i.e., workshops and opportunity for written comments) leading toward the

development of a proposed rule. Following an informal phase, the Department recommends that the Board commence formal rulemaking.

The Department groups the activities into the following issue sets and offers the following procedural recommendations.

1. SPEED and Interconnection Requirements

Section 4 of the Act relates to the development of a sustainably priced energy enterprise development (“SPEED”) Program. Section 7 requires the establishment of interconnection standards. The Act establishes a fairly aggressive time frame for the development of both these aspects, requiring that the procedures to implement SPEED and interconnection standards be in place by order or rule no later than September 1, 2006.

Since it will be important for SPEED resources to meet interconnection rules, DPS believes these two aspects of the Act should proceed during a parallel time frame. However, we believe that the rules for each aspect should be separate. DPS will address first the SPEED program and second the interconnection rules.

The Department believes that the regulations, procedures and standards for the SPEED program are best embodied in a rule rather than an order. Rules are generally applicable, have the force of law, and bind all persons they affect. 3 V.S.A. §§ 801(b)(9), 845(a). In contrast, orders arguably bind only the parties to the proceeding leading to the order. Owners of resources that would benefit from the SPEED program may or may not be parties to a proceeding leading to an order.

The rulemaking for the SPEED program should be preceded by informal workshops to lead to the development of a proposed rule.

In addition to requiring that the regulations and procedures for the SPEED program be in place by September 1, 2006, Act 61 states that the SPEED program shall be established “after notice and hearing” by January 1, 2007. 30 V.S.A. § 8005(b). This language raises the issue of whether a contested case docket is required to establish the program, since under 3 V.S.A. § 801(b)(5) a “contested case” includes a proceeding where, “after an opportunity for hearing,” a tribunal determines the “legal rights, duties or privileges of a party.” It is not clear, however, that establishing the SPEED program necessarily requires the determination of the legal rights, duties, or privileges of a party. DPS believes that the Board should proceed with informal workshops leading to a rule on the SPEED program as recommended above, followed by a docket to “establish” the program after notice and hearing. That docket would apply contested case procedures only to the extent that it becomes clear that the rights, duties or privileges of a party require determination to establish SPEED.

Section 7 requires the establishment of interconnection standards for certain qualifying distributed resources, including CHP and renewable resources. The standards that would emerge, however, are likely to be applicable to any category of small generator. The Board should

consider addressing both issues of resources covered by Section 7 (renewables and CHP) and other resources together. Because interconnection standards of this type may have broader applicability, we recommend that Board view this rule as distinct from a rule that is unique to the SPEED program.

The issue of generation interconnection standards is highly technical. Therefore, the Department believes that a contested case proceeding is likely not the best way for the Board to develop standards. Rather, as was done successfully in the development of net metering interconnection standards, the Board should hold a series of workshops in which the Board, Department, utilities, and interested parties participate. The goal of the workshops would be to develop draft interconnection standards that subsequently would form the basis for a Board Rule.

2. Renewable Portfolio Standard and Renewable Energy Credits

Section 3 establishes an RPS that is conditional on later Board determinations. By July 1, 2012, the Board is required to determine whether Vermont utilities have met certain statutory thresholds of performance (in relation to the acquisition of qualifying SPEED resources). Whether the RPS goes into effect will depend on the Board's determination. 30 V.S.A. § 8005(d)(1). The effective date of the RPS, if any, will be within 12 months of that decision (that is, sometime between January 1 and July 1, 2013). Id.

We recommend that the Board address the issue of implementing the RPS through rulemaking procedures in roughly the same period that the Board will be making the above-referenced determination, but enough in advance so that utilities may take appropriate action to meet an RPS. Administratively, it makes sense to focus resources now on establishing the SPEED program rather than also including the RPS when the effective date of the RPS is conditional and well into the future. In addition, promulgating RPS rules closer to the effective date will help to ensure that the rules reflect the best information about the technologies and circumstances at the time that the rule would take effect.

Act 61 requires the Board to establish a system of tradeable energy credits. As the Board is aware, Vermont generators already participate in the REC trading for qualifying resources necessary to meet the RPS requirements in other states. Vermont also purchases qualifying RECs from neighboring states to meet the requirements of various green pricing options available to Vermont consumers.

The establishment of a separate system of tradeable credits will be necessary to support the establishment of an RPS. The RPS, however, will not go into effect until sometime between January 1 and July 1, 2013, and only if insufficient SPEED resources have come into service. 30 V.S.A. § 8005(d).

The establishment of a system of tradeable RECs may also support green pricing initiatives in Vermont. However, existing green pricing initiatives have successfully relied on the tradeable REC markets of neighboring states.

We therefore encourage the Board to follow the time frame suggested above for rulemaking for the RPS and create a system of tradeable RECs in conjunction with the establishment of rules for an RPS, or when a need for the program presents itself.¹

3. Least-cost Integrated Planning for Transmission Services

The Board has already opened an investigation into the least-cost planning for transmission services (Docket 7081). This investigation is already on a clear path and on a reasonably tight time frame. At this stage, we recommend that the Board house all issues related to transmission planning in this single investigation to avoid unnecessary effort and risk unduly fragmenting issues that tie closely together. The transmission planning investigation is already broad in scope and may serve to help inform avenues of investigation in the Act 61 rulemakings.

4. Budget Levels for the EEU, CHP as an Energy Efficiency Program, Exemptions from Vermont's Energy Efficiency Charge.

There are three provisions of Act 61, listed by the Board in its August 1, 2005 memo, directly related to the nature and funding of the future activities of the energy efficiency utility. The Department recommends implementation of these provisions be pursued in a track separate from considerations of the other major provisions of this legislation.

The three provisions are:

- the determination of an appropriate budget level for Vermont's Energy Efficiency Utility (“EEU”) now that the statutory cap on that funding has been removed;
- the possible development of a combined heat and power (“CHP”) program as an energy efficiency program; and
- the development of a mechanism under which customers could apply for an exemption from paying some or all of the Energy Efficiency Charge (“EEC”).

There are, however, other provisions of this legislation that will inform consideration of the timing, nature, and funding of future directives undertaken by the EEU, and subsequent setting of the EEC. These include:

- least-cost integrated planning for transmission services;
- the creation of an RPS;
- the development of interconnection standards for distributed generation; and
- various reporting requirements.

¹Both the RPS and REC implementation should be done by rule instead of order, for the same reasons advanced above in discussing the SPEED program.

a. Determination of EEU budget

The Department recommends the annual EEU budget be established through a workshop process, as is currently done. As the Board must calculate an EEC rate by November 1 preceding the funding calendar year, the DPS recommends the budget remain at \$17.5 million for 2006, as there is insufficient time to complete the numerous tasks that might inform setting the budget at a different level.

Annual budget setting for subsequent years will need to be informed by the outcome of consideration of a CHP program; an updated study of the amount of energy efficiency potential available in Vermont; an expected DPS request for Board approval of revised avoided costs by the end of calendar year 2005; and analysis necessary to determine the appropriate balance of objectives specified in the legislation, particularly the objective to consider “the value of targeting efficiency and conservation efforts to locations, markets or customers where they may provide the greatest value.” 30 V.S.A. § 209(d)(4). In addition, the Board must now “consider the impact on retail electric rates of programs delivered under subsection (d) of this section” in its EEU budget setting process. Id.

Accordingly, under the Department’s proposal, the Board would hold workshop proceedings in 2006 to determine the budget for 2007 and 2008.

A process to develop a mechanism for customer exemption of the energy efficiency charge should begin early in 2006. The specifics of any granted exemptions for subsequent funding years will need to be known and established prior to implementing the provisions of the existing rule that sets the annual EEC rate charged to customers.

b. Development of a CHP Program

The Department recommends the Board initiate a workshop proceeding in 2006 to explore the possibility of a CHP program and what it would look like, including an assessment of the potential for CHP, the nature of the barriers to its implementation, and whether it would include incentives, loans, technical assistance, or other means to encourage CHP. At the beginning of this proceeding, the Board and participants should consider whether a feasibility study should be undertaken and report prepared that characterizes and assesses the potential for CHP and the barriers thereto, its cost benefits, system reliability implications, reasonable time lines for initial projects, potential developers and partners, strategic locations, and budget amounts necessary to support a program.

The Department notes that the appointment of an entity to deliver a CHP program may involve a contested case docket, since the enabling legislation contemplates such appointment “after notice and opportunity for hearing.” 30 V.S.A. § 209(d)(2). The necessity of such a docket can be discussed further in the workshop proceedings recommended immediately above, since it may depend on the matters to be discussed during the workshops (e.g., feasibility, structure, use of the EEU or a different entity).

Pursuant to Act 74 of this biennium, the Department must establish a clean energy fund. The activities of CHP and this effort should be coordinated to reduce duplication.

c. Energy Efficiency Charge Exemption

As referenced above, a process to develop a mechanism for customer exemption from the energy efficiency charge should begin early in 2006. The DPS recommends the Board initiate a workshop proceeding early in 2006 to review the legislatively established criteria and identify the issues that will need to be addressed in a process. The process under which a customer can seek exemption would be embodied in an amendment to the existing rule on the EEC. The final process will need to result in the determination of any granted exemptions for subsequent funding years prior to implementing the provisions of the existing rule that sets the EEC rate charged to customers.

5. Disclosure Requirements

We believe that the issue of generation resource mix disclosure is an issue that is already overdue. This is an area that is likely to cause consumer and utility confusion and frustration absent clear guidelines. We recommend that the Board establish an informal process to develop or entertain proposals with a goal of establishing clear statewide guidelines for electric utilities that could be the basis for a proposed rule. The Board should invite the utilities, the Attorney General's office and other key stakeholders into the discussions.

6. Board Studies

We encourage the Board to rely on informal workshops and provide the public an opportunity for comment on drafts of any study that the Board prepares for the legislature.

7. Alternative Regulation

Section 11 expands the authority of the Board and Department to initiate alternative regulation frameworks that would, among other criteria, create incentives for decoupling sales growth and financial performance. The Department is currently in early discussions with two Vermont utilities regarding alternative forms of regulation. DPS does not view alternative regulation as necessary to implement the other provisions of Act 61 and recommends that the Board allow, for the time being, progress to be made here on a utility-by-utility basis.